

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

JOHN ALLEN RUBIO,

Petitioner,

V.

**BOBBY LUMPKIN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

No. 1:18-cv-00088

Death Penalty Case

**UNOPPOSED MOTION FOR 30-DAY EXTENSION TO FILE REPLIES TO
DIRECTOR'S MOTION FOR SUMMARY JUDGMENT AND DIRECTOR'S
RESPONSE IN OPPOSITION TO DISCOVERY**

Petitioner, John Allen Rubio, by undersigned counsel, respectfully requests that this Court grant him a 30-day extension of time to file his replies to Director’s Motion for Summary Judgment, ECF Doc. 30, and Director’s Response in Opposition to Discovery, ECF Doc. 31 (hereinafter “Replies”). In support of this request, Rubio sets forth the following:

1. On June 17, 2020, the Director filed both a Response in Opposition to Petitioner’s Motion for Discovery and a Motion for Summary Judgment. ECF Docs. 30–31. On June 26, 2020, this Court entered an order synchronizing the due dates for Rubio’s Replies to the Director’s filings—making both due on August 17, 2020. ECF Doc. 34.

2. On August 7, 2020, this Court granted a thirty-day extension of time to file those Replies on or before September 16, 2020. On September 9, 2020, this Court

granted a second thirty-day extension of time to file the Replies on or before October 16, 2020.

3. Rubio seeks this extension not for the purpose of delay but to ensure adequate time to prepare his upcoming filings in this Court. The ongoing COVID-19 pandemic has infected millions of people worldwide and killed over 200,000 in the United States. Many states across the country, including Texas, have declared a state of disaster and enacted significant restrictions to day-to-day activities to prevent the spread of the virus. In light of the pandemic, Rubio's counsel have been working from home since mid-March and are unsure when they will be able to return to their offices. While counsel is able to continue working on Rubio's case during this time, conditions resulting from the pandemic require additional time to complete tasks remotely. These impacted tasks include accessing files, utilizing necessary office equipment, and obtaining the assistance of support staff. During these extraordinary times, additional time is required to complete Rubio's Replies, as opposed to what was needed in the pre-pandemic era.

4. Also as a result of the pandemic, the Polunsky Unit, where Rubio is incarcerated, has been closed to visitation since March 2020. This has prevented counsel from meeting with Rubio during this time and has led to delays in communication.

5. Beyond the challenges posed by the pandemic, counsel for Rubio is currently experiencing a particularly heavy litigation schedule. Ms. Kristin Swain is currently litigating the denial of a special action in an Arizona capital post-conviction

case in the Arizona Supreme Court. *Ronnie Joseph v. Superior Court, Hon. Jason R. Holmberg*, No. 1 CA-SA 20-0181 (underlying case *State v. Ronnie L. Joseph*, CR2005-014235).

6. Mr. Kovarsky is a full-time faculty member at the University of Texas, and he has an unusual number of commitments between the time that this Motion is filed and October 16. Specifically, he has: an amicus brief due at the Supreme Court (October 2), an unusual five-day teaching week (October 12 through 16), a moot court for an upcoming Supreme Court case (October 6), a law school event on policing for which he is the moderator (October 15), and a CLE on habeas litigation (October 16).

7. The Federal Public Defender's Office ("FPD") represents Dexter Johnson, and has recently litigated various motions relating to an upcoming evidentiary in *Johnson v. Lumpkin*, 4:19-cv-03047 (S.D. Tex.). The FPD also represents Blaine Milam, who has a January 21, 2021 execution date that requires various pleadings and a clemency petition to be prepared.

8. Moreover, Petitioner's Replies in this case require a substantial amount time and resources. The Director's Motion for Summary Judgment alone is 165 pages long, and covers ten claims for relief.

9. Given the circumstances, Rubio respectfully requests that this Court grant a 30-day extension of time to file the Replies, making them due on Monday, November 16, 2020.

10. Rubio will seek no further extensions to file his replies.

11. The Director is not opposed to the requested extension, with the understanding that Rubio will seek no further extensions to file his replies.

September 30, 2020

Respectfully submitted,

/s/ Lee Kovarsky

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CERTIFICATE OF CONFERENCE

I certify that on September 30, 2020, Garrett Greene, Assistant Attorney General, and counsel for the Director, stated that he was unopposed to this motion, with the understanding that Rubio will seek no further extensions to file his replies.

/s/ Jeremy Schepers
Jeremy Schepers

CERTIFICATE OF SERVICE

On October 1, 2020, a copy of the foregoing motion was served Garrett Greene, Assistant Attorney General, via the CM/ECF system.

/s/ Jeremy Schepers
Jeremy Schepers